

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ORLANDO A. ACOSTA, et al.,  
Plaintiffs,

v.

DEMOCRATIC CITY COMMITTEE,  
et al.,  
Defendants.

2:17-CV-01462  
(JUDGE SLOMSKY)

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, upon consideration of the Motion to Extend Time to Respond filed by Defendants Pedro Cortés and the Department of State, Bureau of Commissions, Elections and Legislation, it is hereby **ORDERED** that the motion is **GRANTED**.

Defendants shall submit any answer or other response to Plaintiffs' Second Amended Complaint by June 19, 2017, that being the same deadline for Defendants' response in *Little v. Vazquez*, No. 17-1562.

**BY THE COURT:**

\_\_\_\_\_  
JOEL H. SLOMSKY, J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ORLANDO A. ACOSTA, et al.,  
Plaintiffs,**

**v.**

**DEMOCRATIC CITY COMMITTEE,  
et al.,  
Defendants.**

**2:17-CV-01462  
(JUDGE SLOMSKY)**

**MOTION TO EXTEND TIME TO RESPOND**

Defendants, Pedro A. Cortés, Secretary of the Commonwealth (Secretary), and the Department of State, Bureau of Commissions, Elections and Legislation (BCEL), through their counsel, and pursuant to Federal Rule of Civil Procedure 6(b), hereby request an extension of time to file their response to Plaintiffs' Amended Complaint, which would be due on June 6, 2017.

Defendants move that the deadline to file this response be moved to June 19, 2017, which is the date a response is due in another case before this Honorable Court, *Little v. Vazquez*, No. 17-1562. The Secretary and BCEL are named as defendants in both cases.

Counsel for the Secretary and BCEL contacted and attempted to secure consent from Plaintiffs for this motion. Counsel spoke to Plaintiff Acosta and left a voice message for Plaintiff Lloyd, and sent an email to both Plaintiffs on May 25,

2017. A copy of the email is attached as **Exhibit A**. As of 3:00 p.m. EDT on May 30, 2017, counsel for the Secretary and BCEL had not received any response from Plaintiffs.

In support of this motion, the Secretary and BCEL refer the Court to their supporting Brief, which is being filed simultaneously with this Motion.

WHEREFORE, the motion of the Defendants to extend the time to respond to the Complaint until June 19, 2017 should be granted.

Respectfully submitted,

By: /s/ Timothy E. Gates  
TIMOTHY E. GATES  
Chief Counsel  
I.D. No. 202305  
[tgates@pa.gov](mailto:tgates@pa.gov)

Pennsylvania Department of State  
306 North Office Building  
Harrisburg, PA 17120  
Tel: 717-783-0736  
Fax: 717-214-9899

*Counsel for Defendants, Pedro  
Cortés, Secretary of the  
Commonwealth, and Department of  
State Bureau of Commissions,  
Elections and Legislation*

DATE: May 31, 2017

# **EXHIBIT A**

From: Kotula, Kathleen  
To: "[EdLloyd4ThePeople@yahoo.com](mailto:EdLloyd4ThePeople@yahoo.com)"; "[OrlandoAcosta688@gmail.com](mailto:OrlandoAcosta688@gmail.com)"  
Cc: [Gates, Timothy \(tgates@pa.gov\)](mailto:Gates.Timothy@pa.gov); [Everhart, Ian](mailto:Everhart.Ian)  
Subject: Request for Consent to Extension of Time -- Acosta v. Acosta, No. 17-1462 (E.D. Pa.)  
Date: Thursday, May 25, 2017 4:36:00 PM

---

Dear Messrs. Acosta and Lloyd:

This is a follow-up to our phone call and voice mail from earlier today. We represent the Secretary of the Commonwealth and the Pennsylvania Department of State, which are named as defendants in the lawsuit Acosta v. Acosta, No. 17-1462, currently pending in the United States District Court for the Eastern District of Pennsylvania.

We write to seek your consent to our motion to extend our time to respond in this lawsuit. As you may know, there is another lawsuit also currently pending in the Eastern District, Little v. Vazquez, No. 17-1562, which makes substantially similar claims to the allegations in your second amended complaint.

Pursuant to the Federal Rules of Civil Procedure, our clients have until June 19, 2017, to respond in the Little case. The existing deadline to respond in your case is June 6, 2017. We are requesting another thirteen days in your case under Rule 6(b), to align the deadlines for both cases.

We are seeking your consent to this extension of time as a courtesy, and as contemplated in Local Rule of Civil Procedure 7.1(b).

**Kindly reply via email by next Tuesday, May 30, 2017, at 3 p.m.** to indicate whether or not you will give your consent to this motion.

Sincerely,

**Kathleen M. Kotula** | Deputy Chief Counsel  
PA Department of State | Office of Chief Counsel  
306 North Office Building | Harrisburg, PA 17120  
Phone: 717.783.0736 | Fax: 717.214.9899  
[www.dos.state.pa.us](http://www.dos.state.pa.us)

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION  
ATTORNEY WORK PRODUCT

*The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ORLANDO A. ACOSTA, et al.,  
Plaintiffs,**

**v.**

**DEMOCRATIC CITY COMMITTEE,  
et al.,  
Defendants.**

**2:17-CV-01462  
(JUDGE SLOMSKY)**

**BRIEF OF SECRETARY CORTÉS AND BCEL IN SUPPORT OF MOTION  
TO EXTEND TIME TO RESPOND**

The Federal Rules of Civil Procedure provide that the court may, for good cause, extend the time period within which an act must be done, upon motion (and in some cases, without motion). Fed. R. Civ. P. 6(b)(1). (The exceptions specified in Rule 6(b)(2) do not apply in this case.)

In this case, two sets of Plaintiffs filed two separate lawsuits concerning similar claims about the same subject matter. The two actions name different, but largely overlapping, defendants; the Secretary and BCEL are defendants in both. Both cases are challenges to the legitimacy of a special election held in Philadelphia to fill a vacancy in the 197th Legislative District on March 21, 2017. The cases are

extremely similar if not identical in the facts they allege and the legal theories they pursue.<sup>1</sup>

Plaintiffs in *Little* sought Defendants' waiver of service some 11 days after filing their Amended Complaint with the court, triggering a further 60 days to respond, placing the deadline at June 19, 2017. Fed. R. Civ. P. 4(d)(3). The Secretary and BCEL were not served with any documents<sup>2</sup> in the *Acosta* case until May 16, 2017, which triggered a 21-day window to file a response, which period expires June 6, 2017.

Given the similarity of the Secretary and BCEL's response to the two cases, and to ease the burden on Defendants as they prepare responses to these complaints, they request that the deadline to respond in this case be extended to align with the deadline in *Little*.

---

<sup>1</sup> It appears the *Acosta* plaintiffs revised their Amended Complaint to reflect much more closely the content of the *Little* plaintiffs' allegations. In many cases, one complaint makes the same allegation as the other, *in haec verba*. Compare, e.g., *Acosta* SAC ¶ 9, with *Little* Am. Compl. ¶ 17; *Acosta* SAC ¶ 16, *Little* Am. Compl. ¶ 24; *Acosta* SAC ¶ 23, *Little* Am. Compl. ¶ 31.

The *Acosta* plaintiffs and the *Little* plaintiffs likewise make the same legal claims, often using identical language. Compare, e.g., *Acosta* SAC ¶ 29, with *Little* Am. Compl. ¶ 37; *Acosta* SAC ¶ 32, *Little* Am. Compl. ¶ 39.

<sup>2</sup> The *Acosta* plaintiffs filed their initial complaint with the Court on March 31, 2017; their Amended Complaint on April 4, 2017; and the Second Amended Complaint on April 11, 2017. The version of the complaint served upon the Secretary and BCEL on May 16 was the version from April 4.

Within the Third Circuit, courts examine the following four factors when assessing whether to grant an extension: “1) the danger of prejudice to the nonmovant; 2) the length of the delay and its potential effect on judicial proceedings; 3) the reason for the delay, including whether it was within the reasonable control of the movant; and 4) whether the movant acted in good faith.” *In re Orthopedic Bone Screw Prod. Liab. Litig.*, 246 F.3d 315, 322–23 (3d Cir. 2001).

None of the four factors which constitute the test in effect within the Third Circuit counsels against granting an extension: the brevity of any possible delay suggests that the first two factors would almost favor granting the extension, and neither the third nor the fourth factor would represent any obstacle to granting this extension.

For the foregoing reasons, the Defendants respectfully request that this Honorable Court grant their motion for extension of time.

Respectfully submitted,

By: /s/ Timothy E. Gates  
TIMOTHY E. GATES  
Chief Counsel  
I.D. No. 202305  
[tgates@pa.gov](mailto:tgates@pa.gov)

Pennsylvania Department of State  
306 North Office Building  
Harrisburg, PA 17120  
Tel: 717-783-0736  
Fax: 717-214-9899



*Counsel for Defendants, Pedro  
Cortés, Secretary of the  
Commonwealth, and Department of  
State Bureau of Commissions,  
Elections and Legislation*

DATE: May 31, 2017

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ORLANDO A. ACOSTA, et al.,  
Plaintiffs,**

**v.**

**DEMOCRATIC CITY COMMITTEE,  
et al.,  
Defendants.**

**2:17-CV-01462  
(JUDGE SLOMSKY)**

**CERTIFICATE OF SERVICE**

I, TIMOTHY E. GATES, certify that on May 31, 2017, I served this *Motion to Extend Time to Respond* and *Brief of Secretary Cortés and BCEL in Support of Motion to Extend Time to Respond* via the method identified below:

<p><b>VIA NOTICE BY DOCKET ACTIVITY SENT AUTOMATICALLY BY CM/ECF:</b></p> <p><b><u>FOR PLAINTIFFS:</u></b></p> <p>Orlando A. Acosta 524 WEST YORK STREET PHILADELPHIA, PA 19133 267-414-8774 Fax: Email: <a href="mailto:OrlandoAcosta688@gmail.com">OrlandoAcosta688@gmail.com</a></p> <p>Edward Lloyd 222 E. MENTOR STREET PHILADELPHIA, PA 19120 215-900-9086 Fax: Email: <a href="mailto:EdLloyd4ThePeople@yahoo.com">EdLloyd4ThePeople@yahoo.com</a></p>	<p><b>VIA FIRST CLASS MAIL:</b></p> <p>PHILADELPHIA CITY DEMOCRATIC COMMITTEE:</p> <p>219 SPRING GARDEN STREET PHILADELPHIA, PA 19123 215-241-7800</p> <p>CITY COMMISSIONERS:</p> <p>COMMISSIONER ANTHONY CLARK CITY HALL, ROOM 130 PHILADELPHIA, PA 19107 215-686-3462, 3463 Fax: 215-587-9107</p>
---	---

	<p>COMMISSIONER AL SCHMIDT CITY HALL, ROOM 134 PHILADELPHIA, PA 19107 215-686-3464, 3467 Fax: 215-686-3472 Email: Al.Schmidt@phila.gov</p> <p>COMMISSIONER LISA M. DEELEY CITY HALL, ROOM 132 PHILADELPHIA, PA 19107 215-686-3460, 3461 Fax: 215-686-3947 Email: Lisa.Deeley@phila.gov</p> <p>COMMITTEE OF SEVENTY:</p> <p>123 SOUTH BROAD STREET, SUITE 1800 PHILADELPHIA, PA 19109 215-557-3600 Fax: 215-557-3608 Email: <a href="mailto:futureofthecity@seventy.org">futureofthecity@seventy.org</a></p> <p>EMILIO VASQUEZ:</p> <p>EMILIO VASQUEZ, WARD LEADER 3643 N. PERCY STREET PHILADELPHIA, PA 19140 215-678-1328</p> <p>WARD LEADERS:</p> <p>CARLOS MATOS, WARD LEADER 2122 N. HANCOCK STREET PHILADELPHIA, PA 19133 215-425-0145</p> <p>ELAINE TOMLIN, WARD LEADER 4831 N. 5<sup>TH</sup> STREET PHILADELPHIA, PA 19120 215-457-4024</p>
--	---

JEWELL WILLIAMS, WARD LEADER  
2343 N. SMEDLEY STREET  
PHILADELPHIA, PA 19132

DWAYNE LILLEY, WARD LEADER  
2823 N. CROSKEY STREET  
PHILADELPHIA, PA 19132  
267-432-3665

SHIRLEY GREGORY, WARD LEADER  
5803 N. 12<sup>TH</sup> STREET  
PHILADELPHIA, PA 19141  
215-389-4627

EL-AMOR M. BRAWNE ALI, WARD  
LEADER  
939 W. SILVER STREET  
PHILADELPHIA, PA 19133  
215-223-9329

FORMER STATE REPRESENTATIVE:

LESLIE ACOSTA  
2527 NORTH PALETHORP STREET  
PHILADELPHIA, PA 19133  
215-427-0617

SPEAKER OF THE HOUSE:

MIKE TURZAI  
139 MAIN CAPITOL BUILDING  
P.O. BOX 202028  
HARRISBURG, PA 17120  
717-772-9943  
Fax: 717-772-2470  
Email: [mturzai@pahousegop.com](mailto:mturzai@pahousegop.com)

CITY COMMISSIONERS:

CITY COMMISSIONERS  
ROOM 142, CITY HALL  
PHILADELPHIA, PA 19107  
215-686-3943

	<p>PHILADELPHIA COUNTY BOARD OF ELECTIONS:</p> <p>520 DELAWARE AVENUE PHILADELPHIA, PA 19123 215-686-1591</p>
--	---

By: /s/ Timothy E. Gates  
TIMOTHY E. GATES  
Chief Counsel  
I.D. No. 202305  
[tgates@pa.gov](mailto:tgates@pa.gov)

Pennsylvania Department of State  
306 North Office Building  
Harrisburg, PA 17120  
Tel: 717-783-0736  
Fax: 717-214-9899

*Counsel for Defendants, Pedro  
Cortés, Secretary of the  
Commonwealth, and Department of  
State Bureau of Commissions,  
Elections and Legislation*

DATE: May 31, 2017